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## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

GILEAD SCIENCES, INC.,

Case No. 5:13-cv-04057-BLF

Plaintiff and Counterdefendant,

**VERDICT FORM** 

**V.**.

MERCK & CO., INC. (Defendant only), MERCK SHARP & DOHME CORP., and ISIS PHARMACEUTICALS, INC.

Counterclaimants.

Defendants and

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We, the jury, unanimously agree to the answers to the following questions and return them under

	II						
2	the i	the instructions of this Court as our verdict in this case.					
3	I.	I. U.S. PATENT NUMBER 7,105,499 ("THE '499 PATENT")					
4		A. Claim 1.					
5			1.	Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 patent is invalid for lack of written description?			
6 7				Yes (Verdict for Gilead) No (Verdict for Merck and Ionis)			
8			2.	Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 patent is invalid for lack of enablement?			
9 10	}			Yes (Verdict for Gilead)			
11							
12				If "YES" If "NO" to Questions 1 and/or 2, to both Questions 1 and 2,			
13 14				answer Questions 3 and 4 skip Questions 3 and 4 and go to the next claim.			
15 16			3.	Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 Patent is invalid for derivation from Jeremy Clark?			
17				Yes (Verdict for Gilead) No (Verdict for Merck and Ionis)			
18 19			4.	Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 Patent is invalid for prior invention by Jeremy Clark?			
20							
21				Yes (Verdict for Gilead) No (Verdict for Merck and Ionis)			
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I	B		Claim 2.	
2		1.	Has Gilead proven by clear and c invalid for lack of written descrip	convincing evidence that Claim 2 of the '499 patent is otion?
3			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
4			res (verdict for Gireau)	140 (Volume for Morek and Johns)
5		2.	Has Gilead proven by clear and c	convincing evidence that Claim 2 of the '499 patent is
6			invalid for lack of enablement?	
7			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
8				
9	1	Γ	If "YES"	If "NO"
10			to Questions 1 and/or 2, answer Questions 3 and 4	to both Questions 1 and 2, skip Questions 3 and 4
11		L	and go to the next claim.	and go to the next claim.
12				
13		3.	Has Gilead proven by clear and c invalid for derivation from Jerem	convincing evidence that Claim 2 of the '499 Patent is by Clark?
14			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
15	1			
16	: 1	4.	Has Gilead proven by clear and c invalid for prior invention by Jere	convincing evidence that Claim 2 of the '499 Patent is emy Clark?
17			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
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	1	II. U.S. PA	ATENT NUMBER 8,481,712 ("TH	IE '712 PATENT")			
	2	A. (	Claim 1.				
	3	1. Has Gilead proven by clear and convincing evidence that Claim 1 of the '712 patent invalid for lack of written description?					
	5		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)			
	6 7	2.	Has Gilead proven by clear and c invalid for lack of enablement?	onvincing evidence that Claim 1 of the '712 patent is			
	8		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)			
	9 10		If "YES"	. If "NO"			
	11		to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.	to both Questions 1 and 2, skip Questions 3 and 4 and go to the next claim.			
	12 13	3.		onvincing evidence that Claim 1 of the '712 Patent is			
	14 15		invalid for derivation from Jerem	y Clark?			
	16	4.	Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis) onvincing evidence that Claim 1 of the '712 Patent is			
	17 18	1	invalid for prior invention by Jere	my Clark?			
	19		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)			
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]	1	B.	Claim 2.	
	2	1.	Has Gilead proven by clear and cinvalid for lack of written descrip	onvincing evidence that Claim 2 of the '712 patent otion?
	3    4		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
	5	2.	Has Gilead proven by clear and cinvalid for lack of enablement?	convincing evidence that Claim 2 of the '712 patent
	7		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
8	8			
9	9	ſ	If "YES"	If "NO"
10	o		to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.	to both Questions 1 and 2, skip Questions 3 and 4 and go to the next claim.
1	1	L	una go to the next classia	unu go to the next etama
12 \ 13	-	3.	Has Gilead proven by clear and c invalid for derivation from Jerem	convincing evidence that Claim 2 of the '712 Paten by Clark?
14	11		Vas (Vardiot for Giland)	No (Verdict for Merck and Ionis)
1:			ies (verdict for dhead)	NO (Verdict for Merck and forms)
	f]	4.		convincing evidence that Claim 2 of the '712 Pater
19			invalid for prior invention by Jere	emy Clark?
1′			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
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	1	C.	(	Claim 3.		
	2		1.	Has Gilead proven by clear and convincing evidence that Claim 3 of the '712 patent is invalid for lack of written description?		
	4			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
	5 6 7 8		2.	invalid for lack of enablement?	onvincing evidence that Claim 3 of the '712 patent is  No (Verdict for Merck and Ionis)	
	9 10 11			If "YES" to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.	If "NO" to both Questions 1 and 2, skip Questions 3 and 4 and go to the next claim.	
`	12 13		3.	Has Gilead proven by clear and co invalid for derivation from Jeremy	onvincing evidence that Claim 3 of the '712 Patent is Clark?	
	14 15			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
	16		4.	Has Gilead proven by clear and co invalid for prior invention by Jeren	onvincing evidence that Claim 3 of the '712 Patent is my Clark?	
	17 18 19			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
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1		D.	(	Claim 5.		
2			1.	Has Gilead proven by clear and convincing evidence that Claim 5 of the '712 patent is invalid for lack of written description?		
3 4	!			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
5 6			2.	Has Gilead proven by clear and coinvalid for lack of enablement?	onvincing evidence that Claim 5 of the '712 patent is	
7				Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
8						
9				If "YES"	If "NO"	
10	]			to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.	to both Questions 1 and 2, skip Questions 3 and 4 and go to the next claim.	
11			_	go to the new comm	and go to me name comme	
12			3.	Has Gilead proven by clear and co invalid for derivation from Jeremy	onvincing evidence that Claim 5 of the '712 Patent is Clark?	
14				Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
15					•	
16			4.	Has Gilead proven by clear and co invalid for prior invention by Jere	onvincing evidence that Claim 5 of the '712 Patent is my Clark?	
17				Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)	
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1	Е. С	Claim 7.	
2	1.	Has Gilead proven by clear and co invalid for lack of written descript	nvincing evidence that Claim 7 of the '712 pation?
3     4		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
5	2.	Has Gilead proven by clear and co invalid for lack of enablement?	onvincing evidence that Claim 7 of the '712 pat
6 7		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
8			
9		If "YES" to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.	If "NO" to both Questions 1 and 2, skip Questions 3 and 4 and go to the next claim.
1	L	unu go to the next clum.	ana go to the next claim.
3	3.	Has Gilead proven by clear and co invalid for derivation from Jeremy	onvincing evidence that Claim 7 of the '712 Pater Clark?
4		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
6	4.	Has Gilead proven by clear and co invalid for prior invention by Jerer	onvincing evidence that Claim 7 of the '712 Pat my Clark?
7		Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
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	1	F.	C	Claim 9.	
	2		1.	Has Gilead proven by clear and c invalid for lack of written descrip	onvincing evidence that Claim 9 of the '712 patent is tion?
	3			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
•	4			,	
;	5		2.	Has Gilead proven by clear and c invalid for lack of enablement?	onvincing evidence that Claim 9 of the '712 patent is
(	6				
•	7			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
;	8				
•	9			If "YES"	If "NO"
1	o			to Questions 1 and/or 2, answer Questions 3 and 4	to both Questions 1 and 2, skip Questions 3 and 4
1	1			and go to the next claim.	and go to the next claim.
1:	$_{2}  $				
× 1:	3		3.	Has Gilead proven by clear and c invalid for derivation from Jerem	onvincing evidence that Claim 9 of the '712 Patent is y Clark?
1	4			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
1:	5				
10	6		4.	Has Gilead proven by clear and c invalid for prior invention by Jere	onvincing evidence that Claim 9 of the '712 Patent is emy Clark?
1'	7			Yes (Verdict for Gilead)	No (Verdict for Merck and Ionis)
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G.	Claim 10.		
1			onvincing evidence that Claim 10 of the '712 patent tion?
	Ves (	Verdict for Gilead)	No (Verdict for Merck and Ionis)
	103 (	(Volume for Giloua)	
2			onvincing evidence that Claim 10 of the '712 patent
	Yes (	(Verdict for Gilead)	No (Verdict for Merck and Ionis)
			If "NO" to both Questions 1 and 2,
	answer	Questions 3 and 4	skip Questions 3 and 4
į.	and go	to the next claim.	and go to the next claim.
	Has Gilead	nroven by clear and co	onvincing evidence that Claim 10 of the '712 Patent
•			
	Yes (	(Verdict for Gilead)	No (Verdict for Merck and Ionis)
4		-	onvincing evidence that Claim 10 of the '712 Paten emy Clark?
	Ves (	Verdict for Gilead)	No (Verdict for Merck and Ionis)
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	2	1. Has Gilead invalid for law and go  2. Has Gilead invalid for law answer and go  3. Has Gilead invalid for company and go  4. Has Gilead invalid for possible and go and	1. Has Gilead proven by clear and continual for lack of written description.  Yes (Verdict for Gilead)  2. Has Gilead proven by clear and continual for lack of enablement?  Yes (Verdict for Gilead)  If "YES"  to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.  3. Has Gilead proven by clear and continual for derivation from Jeremy  Yes (Verdict for Gilead)  4. Has Gilead proven by clear and continual for prior invention by Jeremy

#### H. Claim 11. Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 patent is 2 1. invalid for lack of written description? 3 Yes (Verdict for Gilead) Yes (Verdict for Merck and Ionis) 4 5 Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 patent is 2. invalid for lack of enablement? 6 No (Verdict for Merck and Ionis) Yes (Verdict for Gilead) 7 8 If "YES" If "NO" 9 to both Questions 1 and 2, to Questions 1 and/or 2, 10 skip Ouestions 3 and 4 answer Ouestions 3 and 4 and go to the next claim. and go to the next claim. 11 12 3. Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 Patent is invalid for derivation from Jeremy Clark? 13 14 Yes (Verdict for Gilead) No (Verdict for Merck and Ionis) 15 Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 Patent is 4. 16 invalid for prior invention by Jeremy Clark? 17 Yes (Verdict for Gilead) No (Verdict for Merck and Ionis) 18 19 You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the verdict form 20 in the spaces below and notify the Security Guard that you have reached a verdict. The Presiding Juror should retain possession of the verdict form and bring it when the jury is brought back into the 21 courtroom. 22 Dated: March \_ 2016 23 24 25 26 27 28 VERDICT FORM / CASE NO. 5:13-CV-04057-BLF

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